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In re Application of	:	DECISION ON
Alan H. Lettington	:	
PCT No.: PCT/GB2005/000698	:	
Application No.: 10/594,351	:	
Int. Filing Date: 25 February 2005	:	PAPERS FILED
Priority Date: 30 March 2004	:	
Attorney's Docket No.: 06007/42358	:	
For: SCANNING APPARATUS	:	UNDER 37 CFR 1.42

This is a decision on the "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 USC §371" filed 26 August 2008, which has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 26 September 2006, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because an executed oath or declaration was not provided at such time.

On 26 June 2008, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date" must be submitted within two (2) months from date of mailing of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

In response to the Notification mailed on 26 June 2008, applicants filed on 26 August 2008 a declaration signed by Brenda Lettington as legal representative of the inventor now deceased Alan H. Lettington.

DISCUSSION

A review of the application file reveals that the declaration does not comply with 37 C.F.R. §1.497(b)(2).

Because the inventor Alan H. Lettington is deceased and Brenda Lettington has been appointed as the legal representatives for the deceased inventor, 37 C.F.R. §1.497(b)(2) indicates that "[i]f the person making the oath or the declaration or any supplemental or oath or declaration is not the inventor (§§1.42, 1.43, or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state (the inventor's citizenship and so on). If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative." (see MPEP § 409.01)

In this instance the information provided below the signature of the legal representative appears to be that of the legal representative and not of the deceased inventor. As such, the declaration does not provide the necessary information for the deceased co-joint inventor. Thus, the citizenship, residence and mailing address of the inventor needs to be provided in the declaration as required under 37 C.F.R. §1.497(b)(2).

Moreover, the declaration is defective, in that above the name of the deceased named inventor has been improperly altered – hand-written information and lines pointing to places to be filled. Any alternation made after the signing of an oath or declaration must be supported by a supplemental oath or declaration under §1.67. Note 37 CFR §1.52.

Consequently, applicants have not satisfied the requirements under 37 CFR 1.42.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **not accepted**.

Applicant is required to provide an oath or declaration in compliance with 37 CFR 1.497(a)-(b) within TWO (2) MONTHS from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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